

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD J. REUST,

Plaintiff/Counter-Defendant-
Appellee/Cross-Appellant,

V

DOYLE NORWOOD,

Defendant/Counter-Plaintiff-
Appellant/Cross-Appellee,

and

ANGELINE NORWOOD,

Defendant,

and

JASON S. HALEY,

Third-Party Defendant.

UNPUBLISHED

November 27, 2001

No. 222959

Ingham Circuit Court

LC No. 97-086329-NO

Before: O'Connell, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Doyle Norwood appeals as of right from the trial court's order entering judgment in favor of Richard Reust following a jury trial. On cross appeal, Reust challenges the lower court's denial of his motions for summary disposition and directed verdict. We affirm.

The principal claim in this action was dismissed by stipulation and order. This case went to trial in part on Norwood's counterclaim against Reust, his landlord, alleging negligence for injuries Norwood sustained when he was shot through the door of his residence by a third party. On this appeal, Norwood challenges the jury's application of the law to the facts and argues the jury erred in finding Reust negligent, but that his negligence was not the proximate cause of

Norwood's injuries. This Court may overturn a jury verdict only if it is against the great weight of the evidence. *Wischmeyer v Schanz*, 449 Mich 469, 485; 536 NW2d 760 (1995).

Norwood argues the jury misapplied the law to the facts and, as a result, this Court should reverse the trial court verdict. Norwood, however, does not challenge the instructions given to the jury or the verdict form used. Thus, it must be presumed that the jury was properly instructed.

Landlords have a duty to act reasonably to protect their invitees from the foreseeable criminal acts of third persons in the common areas of the landlord's premises. *Stanley v Town Square Cooperative*, 203 Mich App 143, 148; 512 NW2d 51 (1993). A landlord's duty does not extend to conditions from which an unreasonable risk cannot be anticipated or that are so obvious that an invitee is expected to discover them himself. *Id.* This duty exists only when the landlord creates a dangerous condition that enhances the likelihood of exposure to criminal assaults. *Id.*

Proximate cause is usually decided by the trier of fact. *Dep't of Transportation v Christensen*, 229 Mich App 417, 424; 581 NW2d 807 (1998). The testimony in this case conflicted with regard to the extent of Norwood's complaints to Reust and Reust's inaction on those complaints. There existed questions of fact with regard to whether Reust was negligent in not keeping the premises safe by protecting his invitees from the criminal acts of third parties, whether the criminal acts were foreseeable, and whether the type of injury to Norwood was a foreseeable consequence of Reust's conduct. These were issues that properly went to the jury for determination. We find that a rational trier of fact could have concluded that no proximate cause existed between Reust's negligence and Norwood's injuries.

Norwood next argues he was a third-party beneficiary to the lease agreement between Reust and another tenant—about whom Norwood made many complaints—and, therefore, he is entitled to enforce the contract and collect damages for its breach. We disagree. Although Norwood failed to raise this issue below, this Court may still consider this unpreserved issue because it involves a question of law and the facts necessary for its resolution have been presented. *Poch v Anderson*, 229 Mich App 40, 52; 580 NW2d 456 (1998). The interpretation of contractual language is an issue of law that is reviewed de novo by this Court. *Singer v American States Ins*, 245 Mich App 370, 373-374; 631 NW2d 34 (2001).

Norwood directs this Court's attention to two provisions in the lease agreements between Reust and the other tenant. The first is a provision that states, "That no laws, statutes, ordinances of the jurisdictional governmental units will be violated on the premises." The second provision is a provision entitled "covenants of tenant" which contains the following language:

The Tenant agrees not to engage in any unlawful activities in the dwelling unit, in the common areas, or anywhere else on the premises. Such activities include but are not limited to, items listed below:

The Tenant, Tenant's family or guests shall not engage in any act intended to facilitate criminal activity including drug related criminal activity and acts of violence or threats of violence, including the unlawful discharge of firearms on

the premises. Unlawful activities include acts of violence that damage or destroy the dwelling unit or disturb or injure other residents or anyone else in the unit, common areas or on the premises.

Third-party beneficiary law in Michigan is controlled by MCL 600.1405, which provides in pertinent part:

Any person for whose benefit a promise is made by way of contract, as hereinafter defined, has the same right to enforce said promise that he would have had if the said promise had been made directly to him as the promisee.

(1) A promise shall be construed to have been for the benefit of a person whenever the promisor of said promise had undertaken to give or to do or refrain from doing something directly to or for said person.

The test created by this statute is objective, and the subjective intent of the parties is irrelevant. *Oja v Kin*, 229 Mich App 184, 193; 581 NW2d 739 (1998). When the contract is primarily for the benefit of the parties thereto, the fact that a third person is incidentally benefited does not give that third person rights as a third-party beneficiary. *Id.* The law presumes that a contract has been executed only for the parties thereto; thus, the party claiming to be a third-party beneficiary has the burden of proving it was an intended third-party beneficiary. *Id.*

The lease agreements between Reust and his tenant were entered into for the benefit of those two parties as landlord and tenant. Although Norwood may have incidentally benefited from the provision in the lease agreement in which the other tenant agreed not to engage in any unlawful activities, when read as a whole, this provision was not directly for the benefit of Norwood. In addition, the agreement to refrain from engaging in any unlawful conduct did not create a right of Norwood to enforce the contract against Reust and sue him for damages. We find that Norwood has not met his burden of proving he is entitled to sue Reust for damages as an intended third-party beneficiary of Reust's contract with the other tenant.

In light of the above determination, we need not address the issue raised in Reust's cross appeal.

Affirmed.

/s/ Peter D. O'Connell

/s/ David H. Sawyer

/s/ Michael R. Smolenski